

**AN ORDINANCE AMENDING ARTICLES 21-2 AND 21-3 OF THE
WINCHESTER ZONING ORDINANCE TO ENACT PROVISIONS FOR CIVIL
PENALTIES FOR CERTAIN VIOLATIONS**

TA-05-06

*Ed. Note: The following text represents an excerpt of the Zoning Ordinance that are subject to change. Words with ~~strikethrough~~ are proposed for repeal. Words that are **boldfaced and underlined** are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

21-2

Any person, firm, or corporation, whether as principal, agency, employed or otherwise, violating, causing, or permitting the violation of any of the provisions of this Ordinance, **except those outlined in section 21-3 of this Ordinance**, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than ten dollars (\$10) nor more than one thousand dollars (\$1000) for each violation. Each day upon which such violation continues shall constitute a separate offense.

New

21-3 Civil Penalties

Any person, firm, or corporation, whether as principal, agent, employed or otherwise, who violates any provision of this chapter, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or structure or uses any building, structure or land in violation of this Ordinance or any site plan or other detailed statement or plan submitted by one of the above-described persons and approved under the provisions of this Ordinance, shall be subject to the following:

A

Any violation of the following provisions of this Ordinance shall be subject to a civil penalty of one hundred dollars (\$100.00) for the first violation, and a civil penalty of two hundred fifty dollars (\$250.00) for each subsequent violation arising from the same set of operative facts. Any person, firm, or corporation, whether as principal, agent, employed or otherwise who receives more than three civil penalties of the same nature but with different operative facts, the violation shall revert back to a misdemeanor under Section 21-2 of this Ordinance.

1) Each use of a lot, including the use of any structure thereon, not authorized either as a matter of right or by special use permit by these zoning regulations applicable to the district in which the lot is located, in violation of, as applicable, Sections and Subsections 3-1, 3-2, 4-1, 4-2, 5-1, 5-2, 5.1-1, 5.1-2, 6-1, 6-2, 7-1, 7-2, 8-1, 8-2, 9-1, 9-2, 10-1, 10-2, 11-1, 11-2, 12-1, 12-2, 13-1, 13-2, 14-1, 14-2, 15-1, 15-2, 15.1-1, 15.1-2, 16-1, 16-2, 16.1-1, 16.1-2.

2) The operation of a business without a valid certificate of occupancy, in violation of Sections 18-1-1.1, 18-1-1.2, 18-1-2.1, or 18-1-2.2.

3) Any violation of section 18-4 which pertains to residential overcrowding. {Note: This section is a proposed section pending Council approval}

4) Any violation of sections which regulates off-street parking., specifically Subsections 18-6-1.1, 18-6-1.2, 18-6-1.3, 18-6-1.4, or 18-6-1.5.

5) The operation of a business and special regulations pertaining to the Loudoun Street Mall and the Secondary Downtown Assessment District, in violation of Section 18-7, specifically Subsections 18-7-1, 18-7- 1.1, 18-7-1.2, 18-7-1.3, 18-7-1.4, 18-7-1.5, 18-7-3, 18-7-4, or 18-7-5.

6) Any violation of Section 18-8, which regulates permanent and temporary signs, except as provided in section 18-8-13.5 or 18-15 of this ordinance.

7) The construction, erection or location of an accessory building or structure in a residential or commercial district in violation of Section 18-9 or 18-10 of this Ordinance.

8) Any violation of Section 18-16 which pertains to nuisances.

9) Any violation of Section 18-17 pertaining to mobile homes, mobile offices, mobile sales units, and mobile storage units.

10) Any violation of Section 18-19 pertaining to the regulations and guidelines for home occupations.

11) Any violation of Section 18-20 pertaining to the regulation and guidelines for outdoor storage of materials and display of merchandise for rent.

12) Any violation of Article 19, which pertains to site plans and development standards.

13) Any violation of Article 14, which pertains to the Historic Winchester (HW) District.

B.

Each day during which a violation is found to exist shall be a separate offense. However, the same scheduled violation arising from the same operative set of facts may be charged not more than once in a ten (10) day period, and the total civil penalties from a series of such violations arising from the same set of operative facts shall not exceed five thousand dollars (\$5,000)

C.

Any person summoned for a scheduled violation may elect to pay the civil penalty by making an appearance in person or in writing by mail to the Treasurer of the City of Winchester received prior to the date fixed for trial in court. A person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. A signature to an admission of liability shall have the same force and effect as a judgment of court. However, such an admission shall not be deemed a criminal conviction for any purpose. If a person charged with a violation does not elect to enter a waiver of trial and admit liability, then violation shall be tried in the General District Court in the same manner and with the same right of appeal as provided by law. A finding of liability shall not be deemed a criminal conviction for any purpose. However, no payment of any civil penalty shall constitute a legal non-conforming use and will be subject to injunctive relief by the City as long as it stays in existence. Accordingly, no civil penalty for any violation on this section shall be paid by the owner/lessee unless said violation ceases to exist.

D.

The designation of a particular violation in Section 21-3(A) shall be in lieu of any criminal penalty and, except for any violation resulting in injury to persons, such a designation shall preclude the prosecution of the particular violation as a criminal misdemeanor, but shall not preclude any other remedy available under this Chapter.

E.

The designation of a particular violation in section 21-3 (A) shall not be construed to allow the imposition of civil penalties: (i) for activities related to land development within the meaning of Virginia Code § 10.1-603.2; or (ii) for violation of any provision of this Zoning Ordinance relating to the posting of signs on public property or public rights-of-way.

F.

Any reference herein to a section of this chapter shall include all subsections and paragraphs of that section.